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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE P.VISHWANATHA SHETTY

Writ Petition No.3866/1994

Sri H.N.Basaiah
S/o Nanjaiah, major,
residing at Halasur,
Lakkavathi Hobli,
Chikkamagalur Dist. .. Petitioner

(By Sri B.Veerabhadrappe,
Advocate)

Vs.

1. State of Karnataka
by its Secretary,
Revenue Department,
Vidhana Soudha,
Bangalore.
2. The Tahsildar,
Tarikere,
Chickmagalur.
3. The Assistant Commissioner,
Tarikere,
Chickmagalur District.
4. Grama Panchayath,
Mudagodu,
Tarikere Taluk,
Chickmagalur District.
5. H.M.Mallikarjuna
S/o Mallappa,
Yane Papanna,
aged about 35 years,
President of Halasur
Grama Panchayat.

6. H.M.Bhogaraj
S/o H.M.Mariyappaiah,
aged about 46 years,
Agriculturist.
7. H.P.Halesha
S/o Parameswarappa,
aged about 38 years,
Agriculturist.
8. Doddahuchaiah
S/o Siddegowda,
aged about 60 years,
Agriculturist.
9. H.N.Shivanna
S/o Nanjundaiah,
aged about 50 years,
Agriculturist.
10. M.Eswarappa
S/o Mallappa,
aged about 44 years,
Agriculturist.
11. H.P.Yogesha
S/o Puttappa,
aged about 35 years,
Agriculturist.
12. H.S.Basavarajappa
S/o Siddabasappa,
aged about 36 years,
Agriculturist.
13. C.B.Gangadhara
S/o Basappa,
aged about 42 years,
Agriculturist.
14. H.T.Bheemaiah
S/o Timmanna,
aged about 60 years,
Agriculturist.
15. The Land Grant Consultation
Committee, Tarikere,
Chickmagalur District,
represented by its

Secretary-Tahsildar,
Tarikere Taluk,
Chickmagalur District.

.. Respondents

Respondents 5 to 14 are
residents of Halasur village,
Lakkavalli Hobli,
Tarikere Taluk,
Chickmagalur District.

(By Sri N.P.Singri,
HCGP for Respondents 1 to 3;
Sri K.G.Sadashivaiah,
Adv. for Respondents 5 to 14)

Writ Petition filed under Articles 226 and 227 of the Constitution of India with an affidavit praying for a direction to the respondents to issue a Land Grant Certificate in favour of the petitioner in respect of 4 acres of land in Hirgapura village, Lakkavalli Hobli, Tarikere Taluk, Chickmagalur District, etc.

This petition coming on for orders before Court this day, the Court made the following:

O R D E R

Though this petition is listed for orders, with the consent of learned Counsel appearing for the parties, it is taken up for final hearing and disposed of by this order.

2. The petitioner, in this petition, claims to be in unauthorised occupation of 4 acres of land in Hirgapur village, Tarikere Taluk, Chickmagalur District, since 1960, which is admittedly a Gramatana land.



3. In this petition, he has prayed for a direction to issue Land Grant Certificate in his favour in respect of the aforesaid land pursuant to the recommendation made by the Land Grant Consultation Committee by means of its resolution dated 15th of November 1974, a copy of which has been produced as Annexure-A.

4. Sri B.Veerabhadrappe, learned Counsel appearing for the petitioner, submitted that since the petitioner has been in unauthorised occupation of the land in question, he is entitled for regulation of his unauthorised occupation of the said land as provided under Section 94-A of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the Act"), read with Rule 108[✓] of the Rules framed thereunder. He further pointed out that even prior to the incorporation of the said provision, the Land Grant Consultation Committee, after making detailed enquiry and after being satisfied that the petitioner has been in unauthorised occupation of the land in question, had resolved to recommend for

grant of the said land in favour of the petitioner; and in view of the said recommendation made, the petitioner did not make a separate application for regularisation of his unauthorised occupation in respect of the land in question as provided under Section 94-A of the Act. Therefore, he submitted that for any reason, if the recommendation made by the Land Grant Consultation Committee as per Annexure-A cannot be given effect to, the application filed by the petitioner for grant of the land in question may be treated as an application seeking regularisation of his unauthorised occupation; and the Land Grant Committee presently constituted may be directed to consider his prayer for regularisation of his unauthorised occupation of the land in question.

5. Sri Singri, learned Government Pleader appearing for respondents 1 to 4, submitted that since the land in question ^{is} admittedly ~~being~~ a Gramatana land, the petitioner is not entitled for regularisation of his

unauthorised occupation in respect of the land in question. He further submitted that the land in question is required for public purpose, viz., for the purpose of distribution of sites to the members of the public. He also submitted that this petition is liable to be dismissed on the ground of delay and laches and at this length of time, the petitioner cannot be permitted to seek for a direction to give effect to the resolution dated 15th of November 1974 passed by the then Land Grant Consultation Committee.

6. Sri Shivakumar, learned Counsel appearing for the impleading applicants, who sought to come on record as respondents 5 to 14, who claim to be the villagers and for whose purpose, sites have been formed by the Gram Panchayat out of the land in question, submitted that ~~during the year 1974,~~ the Authorities have not given effect to the resolution of the Land Grant Consultation Committee and instead of that, sites have been formed and steps have been taken to distribute sites formed on the land in

question; and, therefore, this petition is required to be dismissed on the ground of delay and laches on the part of the petitioner. He further submitted that the claim made by the petitioner that he is in unauthorised occupation of the land in question is totally incorrect; and the report of the Block Development Officer given in the year 1984 is a collusive one and no value can be attached to the said report.

7. It is true as contended by the learned Government Pleader and Sri Shivakumar appearing for the impleading applicants, that in this petition filed in the year 1994, the petitioner is trying to seek relief on the basis of the resolution passed by the Land Grant Consultation Committee on 15th of November 1974. But for the statement made in the statement of objections admitting that the petitioner is in unauthorised occupation of the land in question, I would have dismissed this petition on the ground of delay and laches on the part of the petitioner in approaching this Court. But,

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since it is admitted in the statement of objections that the petitioner is in unauthorised occupation of the land in question, this petition is required to be considered for ^{a direction for} regularisation of the petitioner's unauthorised occupation of the land in question. Since already a recommendation was made for grant of the land in question in favour of the petitioner and the petitioner has already approached this Court by filing this petition in the month of February 1994, merely because the petitioner did not file Form No.50 seeking regularisation of his unauthorised occupation, he should not be deprived of the relief for regularisation of his unauthorised occupation of the land in question, if he is so entitled under Section 94-A of the Act read with Rule 108D of the Rules framed thereunder. The claim made by the petitioner for grant of land in question, in the facts and circumstances of the case, can be treated as an application for regularisation of his unauthorised occupation of the land in question. In the light of the contention

advanced by the learned Counsel appearing for the impleading applicants, that the petitioner has not been in unauthorised occupation of the land in question and the report submitted by the Block Development Officer is a collusive one, the said question is left open to be considered by the Land Grant Committee constituted under Section 94-A of the Act while considering the petitioner's claim for regularisation of his unauthorised occupation of the land in question. It is also made clear that the direction given to the Land Grant Committee to consider the case of the petitioner for regularisation of his unauthorised occupation of the land in question should not be understood as this Court expressing its view one way or the other on the merits of the claim of the petitioner. It is open to the Land Grant Committee to consider the claim of the petitioner on its merits and in accordance with law and more particularly, with reference to the provisions contained in Section 94-A of the Act.

8. All the contentions raised by the petitioner, the learned Government Pleader and Sri Shivakumar, learned Counsel appearing for the applicants, who came on record as respondents 5 to 14, are left open to be urged before the Land Grant Committee.

9. Having regard to the facts and circumstances of the case, the Land Grant Committee is also directed to hear the applicants-respondents 5 to 14 before taking a decision in the matter.

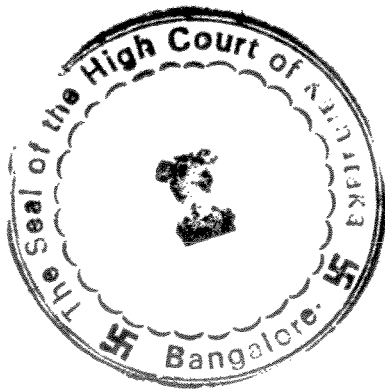
10. Respondents 2 and 3 are directed to place all the records including the application filed by the petitioner for grant of land in question, before the 15th respondent-Land Grant Committee. The Committee is directed to consider the matter afresh in the light of the direction given above, as expeditiously as possible and at any event of the matter, not later than four months from the date of receipt of a copy of this order.

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11. In terms stated above, this petition is allowed and disposed of. Rule issued is made absolute.

12. Sri Singri, learned Government Pleader, is permitted to file his memo of appearance within four weeks from today.

Sd/-
JUDGE



ANB.